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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

May 15, 1996

**AGENDA ITEM**  
For Meeting of: MAY 23 1996

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina  
Staff Director

FROM: Lawrence M. Noble  
General Counsel

N. Bradley Litchfield  
Associate General Counsel

Jonathan M. Levin  
Senior Attorney

Subject: Draft AO 1996-16

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for May 23, 1996.

Attachment

# DRAFT

1 ADVISORY OPINION 1996-16

2  
3 Matthew R. Schneider  
4 Garvey, Schubert & Barer  
5 1000 Potomac Street  
6 Fifth Floor  
7 Washington, D.C. 20007

8  
9 Dear Mr. Schneider:

10  
11 This responds to your letter dated April 19, 1996, requesting an advisory opinion  
12 on behalf of Bloomberg, L.P. ("Bloomberg") concerning the application of the Federal  
13 Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to  
14 the provision of facilities for an electronic town hall meeting involving presidential  
15 candidates.

16 Bloomberg is a limited partnership, with an incorporated general partner,  
17 Bloomberg, Inc. Bloomberg consists of a number of information providers and services.  
18 Bloomberg Financial Markets is "a leading interactive, multi-media general business and  
19 financial news and information provider." The core business, The Bloomberg, is an on-  
20 line financial information network that provides business and general news, information,  
21 and analysis through a computer terminal. In addition, Bloomberg Business News is a  
22 fully accredited global news service with over 300 reporters in over 60 bureaus, which  
23 provides news coverage through an international network of print, television, radio, and  
24 on-line media. The Bloomberg Business News byline regularly appears in over 160  
25 newspapers in 25 countries. Bloomberg terminal users receive Bloomberg Magazine on a  
26 monthly basis.

27 Bloomberg Information TV is a 24-hour news service available by satellite on  
28 DIRECTV™ and on the Bloomberg terminal. Selected programming is available through  
29 cable outlets and commercial broadcast networks. Bloomberg segments are featured on  
30 155 public and commercial television stations in North America. In addition, Bloomberg  
31 Information Radio may be heard on WBBR in New York City and WBNW in Boston and  
32 in syndicated reports on stations throughout the U.S.

1 In an effort to "create a dialogue between national political leaders and senior  
2 government officials and financial markets professionals and investors," Bloomberg is  
3 producing a continuing series of programs called Bloomberg Financial Markets  
4 Electronic Town Meetings. The programs link political leaders with Bloomberg users  
5 and invited guests in a direct dialogue. Bloomberg proposes to invite presidential  
6 candidates to appear at the Town Meetings "in their dual capacities as candidates and  
7 office holders." At the Town Meetings, Bloomberg customers and other interested  
8 persons would query and converse with the candidates. The event would "involve a  
9 direct electronic two-way linkage" between the candidates and Bloomberg customers and  
10 other invited guests that would be covered as news by Bloomberg Information TV,  
11 Bloomberg Information Radio, and Bloomberg Business News.

12 The presidential candidate would appear in a television studio linked via two-way  
13 television to a live Wall Street audience of Bloomberg users and other invited guests in  
14 New York and perhaps at other remote locations. A moderator would open the program,  
15 introduce the candidate, and invite the candidate to make brief remarks. After those  
16 remarks, the moderator would allow members of the live audience and Bloomberg users  
17 across the nation, using electronic mail, to pose questions to the candidate. Bloomberg's  
18 on-line users and other guests would be able to participate in the program by listening in  
19 on a toll-free (1-800) telephone line and by sending questions via (real time) electronic  
20 mail through their individual Bloomberg terminals. All questions to the candidate would  
21 be asked by Bloomberg users and other invited guests, "but not by journalists in their  
22 capacity as journalists."

23 You expect that each program would last approximately one hour. The program  
24 would be available for broadcast, in whole or in part, on a real time or delayed basis to all  
25 news media, programmers, and broadcasters via satellite. A multi-media version of the  
26 program would be produced for viewing on the Bloomberg terminal. In addition, the  
27 event would be covered as news by Bloomberg Information TV, Bloomberg Information  
28 Radio, and Bloomberg Business News.

29 You ask whether the proposed Electronic Town Meetings, as described above, are  
30 permissible under the Act. The response to your question depends upon whether the

1 proposed activity would constitute a contribution for the purpose of influencing, or in  
2 connection with, the election of the presidential candidates appearing at the Town  
3 Meetings.

4 The Act and Commission regulations define the terms "contribution" and  
5 "expenditure" to include any gift of money or anything of value for the purpose of  
6 influencing a Federal election. 2 U.S.C. §§431(8)(A)(i) and 431(9)(A)(i); 11 CFR  
7 100.7(a)(1) and 100.8(a)(1). See 100.7(a)(1)(iii)(A), and 100.8(a)(1)(iv)(A). See also 2  
8 U.S.C. §441b(b)(2) and 11 CFR 114.1(a)(1) (providing a similar definition for  
9 "contribution or expenditure" with respect to corporate contributions). Contributions by  
10 a partnership are subject to the limits for contributions by a person as found at 2 U.S.C.  
11 §441a(a)(1) (for example, \$1,000 per election to a Federal candidate at 2 U.S.C.  
12 §441a(a)(1)(A)), and contributions by a corporate partner would be prohibited. 11 CFR  
13 110.1(e); 2 U.S.C. §441b(a). See 2 U.S.C. §431(11).<sup>1</sup>

14 The Act specifically exempts from the definition of "expenditure,"  
15 any news story, commentary, or editorial distributed through the facilities  
16 of any broadcasting station, newspaper, magazine, or other periodical  
17 publication, unless such facilities are owned or controlled by any political  
18 party, political committee, or candidate.

19  
20 2 U.S.C. §431(9)(B)(i). Commission regulations similarly exclude from the definitions  
21 of contribution and expenditure, "[a]ny cost incurred in covering or carrying" a news  
22 story, commentary, or editorial by any broadcasting station, newspaper, magazine, or  
23 other periodical publication. 11 CFR 100.7(b)(2) and 100.8(b)(2).<sup>2</sup> According to the  
24 legislative history of this "press exemption," Congress intended to preserve the traditional  
25 role of the press with respect to campaigns:

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<sup>1</sup> Contributions by partnerships are attributable not just to the partnership but also to each partner. Since corporations are prohibited from making contributions in connection with a Federal election, no portion of a partnership contribution may be made from the profits of a corporation that is a partner. 2 U.S.C. §441b(a); 11 CFR 110.1(e) and 114.2(b). If any contribution by Bloomberg L.P. were attributed to the incorporated general partner, the contribution would be prohibited.

<sup>2</sup> Commission regulations provide that, in the event the facilities are owned or controlled by a political party, political committee, or candidate, the exemption would still apply to the cost of a news story "(i) which represents a *bona fide* news account communicated in a publication of general circulation or on a licensed broadcasting facility, and (ii) which is part of a general pattern of campaign-related news accounts which give reasonably equal coverage to all opposing candidates in the circulation or listening area..." 11 CFR 100.7(b)(2) and 100.8(b)(2).

1 [I]t is not the intent of the Congress in the present legislation to limit or  
2 burden in any way the first amendment freedoms of the press and of  
3 association. Thus, [the exemption] assures the unfettered right of the  
4 newspapers, TV networks, and other media to cover and comment on  
5 political campaigns.

6  
7 H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. at 4 (1974).

8 Several factors have to be present to conclude that the proposed activity falls  
9 within the press exemption of 2 U.S.C. §431(9)(B)(i). The entity must be a press entity  
10 as described in the section. See Advisory Opinions 1987-8, 1980-109, and 1980-90. See  
11 also *Federal Election Commission v. Multimedia Cablevision, Inc.*, Civ. Action No. 94-  
12 1520-MLB, slip. op. at 6 (D. Kan. August 15, 1995), *appeal docketed*, Nos. 95-3280 and  
13 3315 (10th Cir. Sept. 5, 1995) (referring to the need for "a qualified press entity" in  
14 applying the exemption). Furthermore, in previously applying the press exemption to  
15 candidate appearances, the Commission cited two criteria, based on the statutory  
16 exemption, that would be relevant to determining the scope of the press exemption.  
17 These are (1) whether the press entity is owned by the political party or candidate and (2)  
18 whether the press entity is acting as a press entity in performing the media activity.  
19 Advisory Opinion 1982-44 (citing *Reader's Digest Association v. Federal Election*  
20 *Commission*, 509 F. Supp.1210, 1215 (S.D.N.Y. 1981)).<sup>3</sup>

21 The entities of Bloomberg that will be involved in your proposed activity are  
22 press entities as set forth in the exemption. The core business, The Bloomberg, acts as a  
23 news and commentary provider via computer linkages, performing a newspaper or  
24 periodical publication function for computer users. Bloomberg Information TV,  
25 Bloomberg Information Radio, and Bloomberg Business News function as on-air  
26 newspapers or other periodical publications, using the facilities of broadcasting stations  
27 throughout the nation. In addition, Bloomberg Business News functions as a news  
28 service for newspapers, apparently in much the same manner as Associated Press or

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<sup>3</sup> In Advisory Opinion 1982-44, the Commission permitted a cablecast television station to provide free time to the DNC and the RNC so that each party could air a two-hour presentation discussing public issues from the party's perspective and soliciting contributions to the national party committee. The Commission concluded that this donation of time would not constitute a prohibited corporate contribution because such activity was a form of commentary falling within the press exemption.

1 Reuters. There is no indication that Bloomberg is owned or controlled by any political  
2 party or committee, or by any candidate.

3 In essence, Bloomberg proposes to create and cover a news event in much the  
4 same way as a newspaper would arrange, report, and comment on its own staff interview  
5 with a political candidate or cover a press conference. Much like the presentation of  
6 more traditional news stories and news programs, the means of presentation are  
7 controlled by the press entity. This is a discrete, structured forum with a moderator, a set  
8 format, and a time limit. Compare Advisory Opinion 1996-2 (where a non-press entity  
9 proposed to give free on-line computer accounts to candidates whereby they would have  
10 an unlimited opportunity to present their election advocacy messages to the other  
11 subscribers.) The use of audiences composed of non-reporters, and subscribers and  
12 guests at computer terminals, does not alter the basic nature of this meeting either as a  
13 news event akin to a press conference or as a form of commentary. See Advisory  
14 Opinion 1982-44. Based on the foregoing, the Commission concludes that the entities of  
15 Bloomberg L.P. are press entities that will be acting as press entities in the above  
16 proposal. The Electronic Town Meetings with presidential candidates, as described  
17 above, are therefore permissible under the Act.

18 This response constitutes an advisory opinion concerning the application of the  
19 Act, or regulations prescribed by the Commission, to the specific transaction or activity  
20 set forth in your request. See 2 U.S.C. §437f.

21 Sincerely,

22  
23 Lee Ann Elliott  
24 Chairman  
25

26 Enclosures (AOs 1996-2, 1987-8, 1982-44, 1980-109, and 1980-90)